

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

In the matter of:	)	DIRECTIVE FOR ADMINISTRATIVE CIVIL LIABILITY
	)	COMPLAINT NO. 98-079
	)	FOR
LAS VIRGENES MUNICIPAL	)	VIOLATIONS OF THE CALIFORNIA WATER CODE
WATER DISTRICT	)	AND
(TAPIA WATER	)	BOARD ORDERS NOS. 97-135 AND 98-030
RECLAMATION FACILITY)	)	(NPDES PERMIT NO. CA0056014)
)	
	)	WASTE DISCHARGE REQUIREMENTS
	)	AND
	)	NATIONAL POLLUTANT DISCHARGE ELIMINATION
	)	SYSTEM PERMIT

The California Regional Water Quality Control Board, Los Angeles Region, finds:

1. On October 8, 1998, the Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region (hereinafter Regional Board), issued Administrative Civil Liability Complaint No. 98-079, to Las Virgenes Municipal Water District (hereinafter Las Virgenes). Complaint No. 98-079 alleged violations of the discharge prohibition contained in Order No. 97-135, as amended by Order No. 98-030, during September 1998, when Las Virgenes discharged tertiary treated municipal wastewater to Malibu Creek.
2. On December 14, 1998, this Regional Board conducted a public hearing on Complaint No. 98-079 at which testimony was given concerning the alleged violations by Las Virgenes. Las Virgenes' representatives were given the opportunity to be heard and to contest the allegations in this Complaint and/or the imposition of penalties by the Regional Board.
3. At the hearing, the Regional Board considered whether to affirm, reject, or modify the proposed administrative civil liability, and/or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

Allegations and their Bases

4. Order No. 97-135 (adopted by this Regional Board on November 3, 1997) as amended by Order No. 98-030 (adopted by this Regional Board on April 13, 1998) [NPDES Permit No. CA0056014], *Waste Discharge Requirements for Las Virgenes Municipal Water District (Tapia Water Reclamation Facility)*, prescribes prohibitions, provisions, and limitations on the discharge of tertiary treated wastewater from the Tapia Water Reclamation Facility (Tapia Plant) to Malibu Creek.

5. Las Virgenes is alleged to have violated the following prohibition contained in Order No. 97-135 as amended by Order No. 98-030:

"I.A Discharge Prohibition

1. The Discharger shall not discharge as otherwise permitted by these requirements to Malibu Creek at any of its discharge points commencing either: a) May 1st of each calendar year, or b) the first natural closure of Malibu Lagoon by sand buildup, whichever is later, through and including October 31st of each calendar year. This prohibition will not be in effect during any of the following events:
 - a. Treatment plant upset or other operational emergencies;
 - b. Storm events; or
 - c. The existence of minimal streamflow conditions that require flow augmentation in Malibu Creek to sustain endangered species."
6. The Malibu Lagoon sand bar closed naturally on August 1, 1998, thus this date was the start of the discharge prohibition period through October 31, 1998. The sand bar breached naturally on August 13, 1998, and has remained open as of October 8, 1998.
7. Las Virgenes stopped discharging to the creek on July 30, 1998, but resumed discharging on September 18, 1998. Based on reports from Las Virgenes (written and telephone), the following table shows the date, volume, and time of discharge to Malibu Creek from September 18 to September 30, 1998.

Discharge Date	Discharge		Discharge Started	Discharge Ended
	million gallons	cubic feet/sec.	hours	hours
9-18-98	2.5	9.3	1400	2400
9-19-98	0.7	8.7	0001	0300
9-20-98	1.9	10.1	1700	2400
9-21-98	1.8	8.4	0001	0800
9-22-98	1.9	11.7	1800	2400
9-23-98	1.5	10.1	1830	2400
9-24-98	1.1	10.2	2000	2400
9-25-98	0.8	9.9	2100	2400
9-26-98	1.4	11.6	1930	2400
9-27-98	1.5	11.1	1900	2400
9-28-98	1.3	12.9	2015	2400
9-29-98	1.8	11.6	1815	2400
9-30-98	1.2	9.9	1930	2400
13 days	Total = 19.4			

8. The foregoing discharges during the prohibition period do not qualify under the exempted events in Orders Nos. 97-135 and 98-030, as discussed as follows:

a. Treatment plant upset and other operational emergencies

In a letter dated September 23, 1998, submitted to the Regional Board, Las Virgenes stated that the reasons for discharging to Malibu Creek involved preventing structural damage to available alternative storage and disposal facilities, and to avoid uncontrolled, unmetered flow from Las Virgenes' storage reservoirs. The decision to discharge was made after all the reservoirs were overtopped and all irrigation areas controlled by Las Virgenes were irrigated to the point of saturation. While Las Virgenes may assert that the discharge could be considered an emergency in connection with the management of the reclaimed water, the intent of the exemption for emergencies only pertains to wastewater treatment operations.

b. Storm events

Las Virgenes' discharges covered by this Complaint occurred during the time period between September 18, 1998, and September 30, 1998. Storm events occurred in the area between September 2, 1998, and September 6, 1998. Permit provision I.A.1.b exonerates discharges that occur during storm events, not those which follow storm events.

c. Existence of minimum streamflow conditions

In a letter dated September 2, 1998, to the National Marine Fisheries Service (NMFS), Las Virgenes proposed that to sustain the endangered species, maintain the riparian corridor, and limit freshwater inflows to Malibu Lagoon, the flow in Malibu Creek downstream from the Tapia Plant discharge point should be maintained at 2.2 cubic feet per second (cfs), i.e., 1 cfs to avoid the potential for a take with the steelhead trout¹ and 1.2 cfs for the riparian plant community uptake downstream of the Tapia Plant. Further, Las Virgenes estimated that to maintain the 2.2 cfs flow this year, it would be necessary for the Tapia Plant to begin discharging on October 1, 1998. NMFS, in its reply to the Las Virgenes' proposal (letter dated September 24, 1998), stated that consideration of the minimum flow recommendation is unwarranted at this time because the Tapia Plant is discharging to the creek and that the recent rains and mild daytime temperatures likely slowed, stopped, or reversed instream drying.

According to the monitoring data submitted by Las Virgenes, as of August 18, 1998, the flow in Malibu Creek upstream of the Tapia Plant discharge point was estimated to be 1 to 10 cfs (Station R1), and, at a point before the influence of septic system discharges, the flow was estimated to be 10 to 100 cfs (Station R4). Accurate and precise measurements of the flow in the creek are difficult because of the varying depth and configuration. However, these flow estimates show that it is very unlikely that the flow in the creek is less than 2.2 cfs during the days covered by this Complaint. Furthermore, reportedly the minimum flow that Entrix, Inc., a Las Virgenes contractor undertaking detailed hydraulic measurements in the creek, measured in September 1998 was 4 cfs.

¹ December 7, 1997, letter from the National Marine Fisheries Service to the Regional Board.

Conclusion

9. Based on Finding No. 7, the discharges to Malibu Creek from September 18, 1998, to September 30, 1998, Regional Board staff concluded that the discharges do not qualify as exempt events as defined in the prohibition, therefore Las Virgenes violated the discharge prohibition in Order No. 97-135, as amended by Order No 98-030.

Civil Liability

10. Pursuant to California Water Code (CWC) Section 13385, and for the discharge period September 18, 1998, to September 30, 1998, Las Virgenes is subject to a total civil liability of \$194 million, calculated as follows:

- a. Under CWC Section 13385(c)(1), the maximum civil liability that could be imposed by the Regional Board for violation of the terms and conditions of an order is \$10,000 per day of violation. For the period September 18, 1998, to September 30, 1998, for which the discharge prohibition was in effect, Las Virgenes is alleged to be in violation for 13 days. Therefore, the maximum liability under this section is:

$$\text{Liability} = 13 \text{ days} \times \$10,000 \text{ per day} = \underline{\$130,000}$$

- b. Under CWC Section 13385(c)(2), the maximum liability that could be imposed by the Regional Board for violation of the terms and conditions of an order is \$10 per gallon for volumes in excess of 1,000 gallons per day of violation. Therefore the maximum liability under this section is:

$$\begin{array}{rcl} \text{Total volume discharged from 9/18 to 9/30 (see finding 7)} & = & 19,400,000 \text{ gallons} \\ \text{less 13 days} \times 1,000 \text{ gallons} & = & \underline{13,000 \text{ gallons}} \\ & & 19,387,000 \text{ gallons} \end{array}$$

$$\text{Liability} = 19,387,000 \text{ gallons} \times \$10/\text{gallon} = \$193,870,000$$

- c. **Total maximum liability (a+b) = \$194,000,000**

11. In determining any liability to be imposed, CWC Section 13385(e) requires the Regional Board to consider the following factors: the nature; circumstances; extent; and gravity of the violations; and with respect to the violator - the ability to pay; any prior history of violation; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and any other matters that justice may require.

- a. Nature, circumstances, extent, and gravity of the violations

From September 18, 1998, through September 30, 1998, Las Virgenes discharged tertiary treated wastewater to Malibu Creek. This discharge was in compliance with the water quality limitations contained in Order No. 97-135, as amended, or with the interim limits contained in Time Schedule Order No. 97-136 (adopted on November 3, 1997). However, the discharge itself was prohibited by Order No. 97-135 as amended. This factor warrants a reduction in the maximum liability.

Based on bacteria monitoring being conducted by the City of Los Angeles on a shoreline station in Surfrider Beach, the mean bacterial counts (10 days before and 10 days after Las Virgenes started discharging) decreased from 617 to 182 CFU/100 mL for total coliform and from 193 to 156 for fecal. These coliform values indicate that the Tapia Plant discharges had no adverse impact on the condition of the beach. Although the other impacts of the Tapia Plant discharges to the creek and the lagoon are unquantifiable, the impacts, if any, are likely to be minimal since the lagoon remains open to the ocean. These factors warrant a reduction in the maximum liability.

b. Ability of the Discharger to pay

Payment of the maximum civil liability of \$194 million would impose a significant financial hardship to Las Virgenes and would undermine Las Virgenes' efforts to find long-term solutions to avoid discharges to the creek. A reduction in the maximum liability is, therefore, warranted.

c. Prior history of violations

For the last seven years (1992 to 1998), Las Virgenes has had 19 violations: 2 total suspended solids, 8 residual chlorine, 1 total dissolved solids, 1 chloride, 1 sulfate, 2 coliform, 1 turbidity, 1 acute toxicity, 1 lead, and one occasion of foaming in the effluent. Most of these violations were due to process control and operational problems in the treatment plant which have now been corrected. These violations do not warrant reduction in liability.

d. Degree of culpability

Las Virgenes is solely responsible for initiating the discharge in violation of the discharge prohibition contained in Order 97-135, as amended.

Events leading to the discharge: From September 2, 1998, to September 6, 1998, subtropical storms deposited an average total of 0.52 inch of rain (rain gauge measurement; reportedly, the Malibu watershed received more intense rainfall than other areas, particularly during the first two days). Usage of reclaimed water dropped during these storm event days because of low plant evapotranspiration. Las Virgenes decided to store the excess reclaimed water during these days instead of discharging to Malibu Creek, which is exempt from the prohibition, expecting that the weather would improve and irrigation demand would increase. However, the weather remained cool after the rains. On September 18, 1998, Las Virgenes decided to discharge to the creek when the following conditions occurred:

- (i) All of Las Virgenes' reservoirs and reclaimed water distribution system storage tanks were full to capacity;
- (ii) Irrigation areas controlled by Las Virgenes (hillside fields adjacent to the Tapia Plant, Rancho Las Virgenes farmland and its hillsides) were to the point of saturation and impending runoff condition; and
- (iii) The debris basins were full and showed signs of potential structural failure because they were constructed only for short-term storm runoff protection and use.

Remedial measures: Las Virgenes, in an effort to minimize impacts, implemented the following:

- (i) To minimize impacts from drastic increases in creek flow, reclaimed water was discharged in small volumes, i.e. limited to the amount in excess of what was used by Las Virgenes' customers, on a daily basis, instead of a single large flow to empty the reservoirs and other storage tanks;
- (ii) To minimize impact to the beach, if any, the discharges, except for the first day of discharge, took place during the evening to early morning hours, as indicated in Finding No. 7; and,
- (iii) To reduce the volume being discharged, sewage flows generated within the Los Angeles River watershed were diverted to the emergency bypass in Calabasas, which is tributary to the City of Los Angeles' Hyperion Treatment System.

The foregoing efforts on the part of Las Virgenes warrant reduction in the maximum liability.

e. Economic benefit or savings

By not ensuring the provision of adequate storage capacity during the prohibition period, Las Virgenes may have realized some economic benefits. This factor does not warrant a reduction in the maximum liability.

f. Other matters as justice may require

Regional Board staff has spent about 70 hours in gathering and evaluating information pertinent to the alleged violations, preparing this Complaint and related documents, and participating in discussions with Las Virgenes and interested parties regarding the violations. For staff expense recovery purposes, the Regional Board charges \$70 per hour. The total cost for staff time is therefore \$5,000. This amount should be considered when determining the total amount of the civil liability.

Recommended Civil Liability

- 12. While CWC Section 13385(c) authorizes the Regional Board to impose a maximum civil liability of \$194 million, upon consideration of the foregoing factors as required by CWC Section 13385(e), the Regional Board's Executive Officer recommended a civil liability of \$70,000 for violations of the discharge prohibition from September 18, 1998, to September 30, 1998. This amount was determined by reducing the maximum civil liability under CWC Section 13385(c)(1) of \$10,000/day to \$5,000/day for 13 days for a total of \$65,000 and Regional Board staff time cost of \$5,000.
- 13. Upon consideration and deliberation of the evidence presented at the public hearing on December 14, 1998, the Regional Board upheld the alleged violations for which the Regional Board may impose civil liability under CWC Sections 13323 and 13385.

14. In considering the amount of civil liability, the Regional Board took into account the statutory factors prescribed in CWC Section 13385(e). The Regional Board determined that an appropriate civil liability in this matter is \$18,000.
15. This Directive for Administrative Civil Liability does not preclude the Regional Board from taking any other enforcement actions for other violations not covered by Complaint No. 98-079, including other discharges to Malibu Creek after September 30, 1998, but before November 1, 1998.
16. This Directive is exempt from the requirements of the California Environmental Quality Act (Public Resources Code Section 21100, et seq.) as an enforcement action pursuant to Title 14, California Code of Regulations, Section 15321.

IT IS HEREBY ORDERED THAT, pursuant to Sections 13323 and 13385 of the California Water Code (CWC), Las Virgenes Municipal Water District is assessed a total of \$18,000 based on consideration of statutory factors in CWC Sections 13327 and 13385(e). This assessment is payable as follows:

1. Propose and fund a Supplemental Environmental Project (SEP) and pay staff costs in the total amount of \$18,000 as follows:
 - (a) Make a cash payment of \$5,000 for reimbursement of staff costs, due and payable to the State Water Resources Control Board's (SWRCB) Cleanup and Abatement Account by January 14, 1999. Pay the remaining \$13,000 of the penalty in the form of an approved SEP in lieu of cash payment;
 - (b) Should Las Virgenes elect to apply a portion of the civil liability to a SEP, a proposal for the SEP is due to the Regional Board by January 7, 1999, for approval by the Executive Officer. If the Executive Officer does not approve Las Virgenes' proposed SEP, Las Virgenes could either:
 - (i) submit a new proposal for a SEP, as directed by the Executive Officer, within 30 days of such a decision by the Executive Officer; or
 - (ii) submit a cash payment for the remaining \$13,000 of the civil liability, to the SWRCB's Cleanup and Abatement Account, within 30 days of such a decision by the Executive Officer.
 - (c) Should Las Virgenes fail to submit a SEP proposal by January 7, 1998, the remaining \$13,000 is due by January 14, 1999, payable to the SWRCB's Cleanup and Abatement Account; or
2. Submit payment of \$18,000 by January 14, 1999, payable the SWRCB's Cleanup and Abatement Account.

In the event that Las Virgenes fails to comply with the provisions of this Directive, the Executive Officer is authorized to refer the matter to the Office of the Attorney General for appropriate action against Las Virgenes.

Las Virgenes Municipal Water District
Directive for Administrative Civil Liability Complaint No. 98-079
December 14, 1998

I, Dennis Dickerson, do hereby certify that the foregoing is a full, true, and correct copy of the directive adopted by the California Regional Water Quality Control Board, Los Angeles Region, on December 14, 1998.

DENNIS DICKERSON
Executive Officer

Date: December 14, 1998